



Southern California Regional Rail Authority  
700 South Flower Street, 26<sup>th</sup> Floor  
Los Angeles, California 90017-4101

May 3, 2010

**VIA E-MAIL ONLY**

Warren Havens

warren.havens@sbcglobal.net

Dear Mr. Havens,

SCRRRA is in receipt of your April 23, 2010 request for public records relative to the "SCRRRA-MCLM contract for 217-222MHz FCC radio frequency licenses." In accordance with the California Public Records Act, we respond to your four requests individually as follows:

**Request No. 1**

"All written contracts, agreements, understandings and undertakings, including all drafts, signed or authorized by any person representing SCRRRA, between SCRRRA and a company called Maritime Communications/ Land Mobile LLC -- (sometimes also called "MCLM", or any company with a similar name, or any agent of said company: herein together called "MCLM")-- to obtain use of or title to any FCC-licensed radio spectrum in the 217 to 222 MHz range."

**Response to Request No. 1**

SCRRRA has located the records responsive to this request, and attach to this email the following documents, provided electronically at your request:

- (1) The November 9, 2009 Letter of Intent for Acquisition of MCLM AMTS License between MCLM and SCRRRA,
- (2) The November 20, 2009 Escrow Agreement by and among SCRRRA, MCLM, and Fletcher, Heald & Hildreth, acting as Escrow Agent;
- (3) The February 5, 2010 "Partitioned License Purchase Agreement" between MCLM and SCRRRA; and
- (4) The February 8, 2010 Escrow Agreement by and among, SCRRRA, MCLM, and Union Bank, acting as Escrow Agent (note that we have redacted specific wiring and account numbers)

Please note that we do not include drafts of the above referenced agreements pursuant to California Government Code 6254(a) and 6255(a).

**Request No. 2**

"All correspondence and communications of any kind that relate to item '1' above between SCRRRA and MCLM."

Response to Request No. 2

SCRRA is searching for, and will collect and appropriately examine what may be a voluminous amount of records. Pursuant to California Government Code Section 6253, we will respond to you no later than May 17, 2010 with a determination as to whether your Request No. 2 seeks copies of disclosable public records in SCRRA's possession.

Request No. 3

“All correspondence and communications of any kind that relate to item '1' and '2' above between SCRRA and: (i) the Federal Communications Commission (the "FCC"), (ii) any other federal agency including the Federal Railroad Administration, or (iii) any State of California agency, employee of any State of California agency, or member of the State of California legislature.”

Response to Request No. 3

As a preliminary matter, we have located records that are responsive to request 3(i) and attach to this email the following:

- (1) The March 8, 2010 FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau (Form 601) (Application as Filed).
- (2) The March 8, 2010 SCRRA Request for Waivers before the FCC.
- (3) The March 11, 2010 FCC Application for Assignments of Authorization and Transfers of Control: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau (Form 603) (Assignment Application as Filed).
- (4) The April 16, 2010 letter from Marion Ashley, Chairman, Riverside County Board of Supervisors – District Five, to Marlene H. Dortch, Secretary, FCC.
- (5) The April 19, 2010 letter from Don Knabe, Supervisor, Fourth District, County of Los Angeles, to Marlene H. Dortch, Secretary, FCC.
- (6) The April 20, 2010 letter from Darren M. Kettle, Executive Director, Ventura County Transportation Commission to Marlene H. Dortch, Secretary, FCC.
- (7) The April 26, 2010 SCRRA Opposition to Motion to Extend Pleading Cycle before the FCC.

In addition to the above documents, SCRRA is searching for, and will collect and appropriately examine what may be a voluminous amount of records. Pursuant to California Government Code Section 6253, we will respond to you no later than May 17, 2010 with a determination in particular as to whether your Request Nos. 3(ii) and 3(iii) seek copies of disclosable public records in SCRRA's possession.

Request No. 4

*"All documents of any kind (dealing with FCC, legal, technical, economic, public policy and relations, or other issues) relating to items '1', '2' and '3' above (whether or not they are correspondence and communications), or relating to use or potential use or possession by SCRRA of any 217-222 MHz radio spectrum, and any other radio spectrum, whether for Positive Train Control or some other use or application."*

Response to Request No. 4

You have requested that we respond to this request "later," after producing the other records requested above. We therefore do not respond to your request at this time, but will review it after May 17th and inform you as to the timeline for SCRRA's determination as to whether there may be any records that are responsive to your request. We may also seek some further clarification from you at that time as to the specifics of your request. However, as a courtesy, we do provide with this email copies of some documents that we think may be relevant to your request and that are public records subject to disclosure under the California Public Records Act. Specifically, those documents are:

(1) November 13, 2009 Board Report for Contract No. PO370-10 – Letter of Intent to Purchase Radio Frequency Licenses Necessary for Positive Train Control from Maritime Communications/Land Mobile LLC.

(2) January 8, 2010 Board Report for Purchase Order No. 370-10 to Authorize CEO to Execute Asset Purchase Agreement for Radio Frequency Licenses Necessary for Positive Train Control from Maritime Communications/Land Mobile, LLC.

Please be advised that at this time SCRRA will waive all fees associated with your request as regarding those documents provided with this email. Depending on the outcome of our further inquiries into your request, fees may apply. As you have requested, we will keep you informed if the estimated fees exceed \$500.

Finally, in providing you with this response, SCRRA is not waiving any rights, defenses, claims of privilege, or claims of exception or exemption of any record under the California Public Records Act or any other statutes.

Sincerely,



Robert L. Sanders  
Administrative Services Supervisor  
sandersr@scrta.net  
(213) 452-0289



SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

**TRANSMITTAL DATE:** November 9, 2009

**MEETING DATE:** November 13, 2009 **ITEM 17**

**TO:** Board of Directors

**FROM:** Chief Executive Officer

**SUBJECT:** Contract No. PO370-10 – Letter of Intent to Purchase Radio Frequency Licenses Necessary for Positive Train Control from Maritime Communications/Land Mobile LLC

**Issue**

Radio frequency (RF) spectrum is required in order to support SCRRA's operations and provide for the deployment of Positive Train Control (PTC) on Metrolink trains. Absent this critical communications component, PTC cannot be deployed.

**Recommendation**

Staff recommends the Board authorize the Chief Executive Officer to (1) enter into a Letter of Intent to Purchase Radio Frequencies with Maritime Communications/Land Mobile, LLC, for the purchase of Federal Communications Commission licenses in the 220 MHz band, subject to the fundamental business terms set forth in this report, and (2) make a deposit into escrow of \$60,000 to secure the Letter of Intent which funds shall be returned to SCRRA upon execution of the subsequent purchase agreement, with the understanding that any subsequent purchase agreement will be brought to the Board for approval.

**Alternatives**

The Board may direct staff to seek alternate sources of RF spectrum. Investigation to date has not located any such alternative source.

**Background**

Federal legislation (the Rail Safety Improvement Act of 2008) requires SCRRA to implement an interoperable PTC system by December 31, 2015. SCRRA is aggressively pursuing its goal of equipping all of its locomotives and cab cars for PTC by the earlier deadline of 2012. PTC systems require a substantial amount of dedicated RF spectrum. UP and BNSF both will use the 220 MHz spectrum on their PTC systems with which SCRRA's PTC must interoperate. It is therefore necessary for SCRRA to

obtain enough suitable spectrum in the 220 MHz band in order to implement an interoperable PTC system as required. SCRRA has obtained the services of a consultant, Alan Polivka of Transportation Technology Center, Inc., as well as special legal counsel for Federal Communications Commission (FCC) related issues at the law firm Fletcher, Heald & Hildreth to advise it in the procurement of the necessary spectrum licenses.

220 MHz spectrum frequencies are licensed by FCC. While the FCC does sometimes make Public Safety/Government-only spectrum available directly to government agencies like SCRRA for purposes like PTC, SCRRA's consultant and legal counsel have determined that such spectrum, in sufficient quantities to allow for PTC, is not available without requiring federal rules changes and/or waivers from the FCC that might not be forthcoming at all, and that in any event may not be finalized until after any other alternatives no longer exist. SCRRA's only low risk option to ensure that PTC can be deployed, therefore, is to purchase frequency licenses on the open market. Even when purchased on the open market, the acquisition of such a license involves an FCC transfer and approval process.

SCRRA's consultant has made considerable efforts to research all known spectrum licenses for sale on the open market and has advised that based on best available information, only one source is selling sufficient quantities of radio frequency licenses that are suitable for use in Metrolink's geographical territory. The single source is Maritime Communication/Land Mobile, LLC, and (MC/LM), which is offering for sale 1 MHz of spectrum from the 217-222 MHz band. SCRRA is still in the process of determining exactly how much spectrum is necessary for its PTC system. The 1 MHz held by MC/LM is probably more than will be necessary for SCRRA's short and mid-term PTC needs. As SCRRA will not immediately need the entire 1 MHz for PTC, it may use excess spectrum for other communications needs, for instance a system maintenance voice channel or may sell or lease any excess spectrum, or may determine not to purchase the entire 1 MHz in the first instance. At this time, staff anticipates purchasing the entire 1 MHz as the pricing for that quantity reflects a volume discount such that there will be only a limited financial benefit to purchasing less than the entire 1 MHz.

The business terms of any Asset Purchase Agreement (APA) with MC/LM will be complex, and the approval of that agreement will be brought back to the Board. There are a number of issues relative to the licenses that will need to be resolved in order for the FCC to approve SCRRA's acquisition. These issues include jurisdictional waivers that may be needed from both the United States Coast Guard and the Mexican government, as well as legal challenges that are currently pending before the FCC that may not substantively affect SCRRA's rights, but that could delay the actual transfer of the RF license to SCRRA. In addition, MC/LM has previously leased, or otherwise obligated, a portion of the spectrum and SCRRA will need to ensure that these obligations either are terminated, or do not interfere with its use of the spectrum for PTC.

Because of these complexities and the potential loss of the needed spectrum because it is anticipated that there are other potential buyers, staff proposes a preliminary step of entering into a Letter Of Intent (LOI) with MC/LM in order to ensure the availability of the RF while obligating both parties to negotiate exclusively with each other in good faith the details of the APA. The LOI requires that SCRRA make a \$60,000 deposit into an escrow account in order to secure the frequency availability. SCRRA will forfeit this deposit if it decides not to enter into the subsequent APA within 90 days.

Staff intends to negotiate the business terms of the APA with MC/LM to provide SCRRA with protections against the possibility that the transfer of the license will be delayed, or even prohibited by the FCC. Pursuant to the LOI, the purchase price of the RF will be \$7,178,000. SCRRA will make a deposit of 10% of the total purchase price into escrow upon execution of the APA. This deposit essentially reserves the spectrum for SCRRA while the process of transferring the license by the FCC is underway. SCRRA will then pay the remaining sums due only upon successful assignment and transfer of the licenses to SCRRA by the FCC. If assignment by the FCC does not occur within a specified time, likely to be six months, SCRRA may re-claim its deposit from escrow and terminate the APA.

As indicated above, the spectrum for the geographic area and in the quantity required is currently available only from a single source. The APA therefore must conform to Policy CON-19, Sole Source and Non-Competitive Negotiated Procurements. Pursuant to that policy, and in accordance with SCRRA's Contract and Procurement Administration's CON-5, a cost and price analysis must be performed on the negotiated price with MC/LM prior to entering into the APA. Staff, in conjunction with SCRRA's consultants, has closely analyzed MC/LM's proposed purchase price and has compared it to similar procurements by other entities, including a recent procurement of spectrum by the freight operators that share tracks with SCRRA. SCRRA's consultant has also analyzed MC/LM's original purchase price. This research has confirmed that MC/LM's offered price is within industry norms. While radio frequencies are not the kind of goods or services susceptible to a traditional cost or price analysis, Staff's extensive research indicates that MC/LM's proposed price is fair and reasonable.

Staff recommends authorizing an LOI with MC/LM, and the deposit of \$60,000, leading to the acquisition of 1 MHz of spectrum from the 217-222 MHz band subject to the business terms described in this report. The actual acquisition of the license pursuant to an APA will be brought to the Board for approval. Frequency licenses are rarely on the open market for any length of time, and so the opportunity to purchase the necessary bandwidth from MC/LM is likely only available for a very short period. Absent entering into this LOI with MC/LM now, it is unknown how and if SCRRA will be able in the future to acquire the spectrum necessary to implement its PTC system as required.

**Budget Impact**

Funding for the spectrum purchase is available within the Positive Train Control (PTC) program utilizing a combination of Federal, State and Local grants

Prepared by: Darrell Maxey, Director Engineering and Construction



DAVID SOLOW  
Chief Executive Officer



SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

**TRANSMITTAL DATE:** January 4, 2010

**MEETING DATE:** January 8, 2010 **ITEM 9**

**TO:** Board of Directors

**FROM:** Chief Executive Officer

**SUBJECT:** Purchase Order No. 370-10 Authorize CEO to Execute Asset Purchase Agreement for Radio Frequency Licenses Necessary for Positive Train Control from Maritime Communications/Land Mobile, LLC

**Issue**

Radio frequency (RF) spectrum is required in order to support Metrolink's operations and provide for the deployment of an interoperable Positive Train Control (PTC) System. Absent this critical communications component, PTC can not be deployed.

**Recommendation**

Staff recommends the Board authorize the Chief Executive Officer to (1) enter into an Asset Purchase Agreement (APA) with Maritime Communications/Land Mobile, LLC (MCLM), for the purchase of Federal Communications Commission (FCC) licenses in the working range of 220 MHz band (the AMTS band), subject to the fundamental business terms set forth in this report, and (2) make the payments called for in the APA, including a deposit into escrow upon execution of the APA of \$717,800, representing 10% of the maximum purchase price, which funds shall be returned to Metrolink unless the license transfer is approved by the FCC within a specified period of time.

**Alternatives**

The Board may direct staff to continue to negotiate terms of the APA with subsequent Board approval prior to executing the APA, or to terminate negotiations and seek alternate sources of RF spectrum. Investigation to date has not located any acceptable alternative source that fits the needs and requirements of SCRRRA. Metrolink has already entered into a Letter of Intent to purchase the RF and will forfeit a \$60,000 deposit if it does not enter into the APA by February 8, 2010.

**Background**

Federal legislation (RSIA'08) requires Metrolink to implement an interoperable PTC system by December 31, 2015. Metrolink is aggressively pursuing an implementation



strategy to meet an earlier deadline of 2012. PTC systems require a substantial amount of dedicated RF spectrum. UP and BNSF both will use the 220 MHz spectrum on their PTC systems with which Metrolink's PTC must interoperate. It is therefore necessary for Metrolink to obtain enough suitable spectrum in the working range of the 220 MHz band in order to implement an interoperable PTC system as required. Metrolink has obtained the services of a consultant, Alan Polivka of Transportation Technology Center, Inc., as well as legal counsel at the law firm Fletcher, Heald & Hildreth in Washington DC to advise it in the purchase of the necessary RF.

Pursuant to Board action on November 13, 2009, SCRRA has entered into a Letter of Intent (LOI) to purchase the RF from MCLM. The fundamental business terms of the acquisition were set forth in the LOI and approved by the Board:

1. Purchase Price. The purchase price is \$7,178,000, assuming that Metrolink purchases the full 1 MHz of spectrum. Under the APA, Metrolink may determine to purchase less spectrum if it determines, pursuant to an analysis that is presently underway, that it needs less RF to operate its PTC System. The full purchase price represents a volume discount and the unit price may therefore be higher if Metrolink purchases less than 1MHz, although the total price will be less than \$7,178,000.
2. Initial Deposit. Metrolink will make a deposit of \$717,800, representing 10% of the maximum purchase price, into escrow upon execution of the APA. This deposit essentially reserves the spectrum for Metrolink while the process of transferring the license by the FCC is underway.
3. Final Payment. Metrolink will pay the remaining sums due only upon a final order from the FCC assigning the license to Metrolink.
4. Opt-Out. If assignment of the license by the FCC does not occur within 12 months of filing the assignment application at the FCC, Metrolink may re-claim its entire deposit from escrow and terminate the APA. Metrolink also retains the right to continue with the transaction at that time, if it so chooses.

As was set forth in the report authorizing entering into the LOI, as of the second and third quarter of 2009, the spectrum is available only from a single source. This conclusion has been confirmed both by Metrolink's staff and consultant, and also independently by Spectrum Bridge, the leading broker of radio frequencies in the needed bandwidth. The APA therefore must conform to Policy CON-19, Sole Source and Non-Competitive Negotiated Procurements. Pursuant to that policy, as well as CON-5, staff, in conjunction with Metrolink's consultants, has conducted a cost and price analysis on the negotiated price with MCLM. MCLM's proposed purchase price was compared to similar procurements by other entities, including a recent procurement of spectrum by the freight operators that share tracks with Metrolink. In addition, Metrolink commissioned Spectrum Bridge to provide a fair market valuation of the

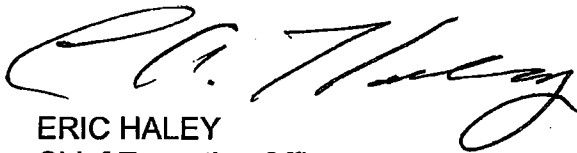
proposed spectrum, which valuation set forth the price of all recent analogous spectrum purchases. Based on all of the above information, Metrolink's consultants have advised that the proposed purchase price is within industry standards and is fair and reasonable. Staff has validated that determination.

The LOI requires the APA be entered into by February 8<sup>th</sup>. The fundamental business terms of the APA have been negotiated, and indeed were set forth in the LOI. While there does not appear to be any significant disagreement between the parties, the time necessary in the ordinary course of business for finalizing the APA terms and conditions does not allow for Board action at a regularly scheduled meeting in time to meet the February 8<sup>th</sup> deadline. Staff is therefore asking the Board to authorize the CEO, upon conclusion of negotiations with MCLM, to (1) execute the APA on terms consistent with this Report and in a form approved by Legal Counsel, and (2) make the necessary payments called for in the APA, including the initial escrow deposit due upon execution and any additional payments due upon closing.

**Budget Impact**

Funding for the spectrum purchase is available within the Positive Train Control program utilizing combination of Federal, State and Local grants

Prepared by: Darrell Maxey, Director Engineering and Construction



ERIC HALEY  
Chief Executive Officer

November 10 2009

Mr. John Reardon  
CEO  
Maritime Communications/Land Mobile, LLC  
218 N. Lee Street, Suite 318  
Alexandria, Virginia 22314

Letter of Intent for Acquisition of MCLM AMTS License

Dear Mr. Reardon:

The purpose of this Letter of Intent is to evidence the desire of SCRRA/Metrolink (herein "Metrolink") to purchase from Maritime Communications/Land Mobile, LLC (herein "MCLM") all or a portion of the spectrum of the Federal Communications Commission ("FCC") license WQGF 318 in the Metrolink service area designated by the attached spreadsheet.

Metrolink understands that Station WQGF 318 is the "A Block" of AMTS frequencies purchased in Auction 61 for the Southern Pacific service area. Metrolink further understands that MCLM owns an incumbent license for many of these same areas (as set forth in Exhibit B hereto), and that this incumbent license or portions thereof will be cancelled by MCLM and any customer commitments associated therewith similarly cancelled or, in the case of the Spectrum Tracking, Inc. lease, assigned to Metrolink as part of conveyance of the license for Station WQGF 318 to Metrolink.

With the exception of the existing Spectrum Tracking, Inc. lease to be assigned to Metrolink, MCLM agrees to deliver the Station WQGF 318 license spectrum free and clear of any incumbents, liens or other restrictions making the spectrum unusable by Metrolink (to be identified prior to executing an Asset Purchase Agreement), and that Metrolink's preliminary evaluation that the spectrum is usable for Metrolink's purposes is a condition to Metrolink's execution of an Asset Purchase Agreement. The parties will negotiate provisions in the Asset Purchase Agreement to ensure that Metrolink's operations on the purchased spectrum will not receive interference from facilities that remain or become licensed to MCLM. MCLM agrees to cooperate with Metrolink to negotiate in good faith an Asset Purchase Agreement to effectuate the purpose of this Letter of Intent. MCLM understands that a condition of Metrolink's executing an Asset Purchase Agreement will be approval of that Agreement by the SCRRA Board of Directors. The Asset Purchase Agreement shall contain customary terms regarding this transaction, including a provision allowing Metrolink to opt-out of the purchase of the WQGF 318 license (with the return of its entire Deposit) if the FCC does not approve the assignment of the license to Metrolink within a specific period of time, to be set forth in the Asset Purchase Agreement. The Asset Purchase Agreement will also provide that one condition of closing will be that the FCC's grant of the assignment of license includes grant of

various waiver requests necessary to properly use the spectrum for Metrolink's purposes.

MCLM and Metrolink further agree to the following terms:

- a) Purchase Price. Metrolink agrees to pay to MCLM Seven Million One Hundred and Seventy-Eight Thousand Dollars (\$7,178,000.00) (the "Purchase Price") for the entire A Block License. MCLM will be responsible for separately paying any "unjust enrichment" penalty to the FCC, and for separately paying any brokerage fees associated with this transaction. The Asset Purchase Agreement will include provision for a Deposit of Ten Percent (10%) paid into escrow at the execution of that Agreement. The balance of the purchase price shall be paid upon Closing.
- b) Adjustments to Purchase Price. MCLM agrees that Metrolink, in its discretion, may determine to purchase less than all the 1 MHz of spectrum available. Metrolink agrees that, at a minimum, it will purchase 500 kHz of spectrum. In that event, Metrolink will send MCLM written notice, and MCLM will adjust the purchase price accordingly.
  - i. Metrolink agrees that MCLM has provided a discounted bulk purchase offer of \$0.35 cents per MHz/pop in calculating the Purchase Price in Section (a) above, based on the population figures contained in the attachment below.
  - ii. In the event Metrolink determines to purchase less than the entire amount of spectrum, the Purchase Price for all spectrum purchased by Metrolink shall be based on the higher amount of \$0.45 cents per MHz/pop.
- c) Deposit and Exclusivity. Upon execution of this Letter of Intent, Metrolink shall pay an Initial Deposit of Sixty Thousand Dollars (\$60,000.00) into escrow with the law firm of Fletcher, Heald and Hildreth, PLC. In exchange for the Deposit, MCLM agrees to take the Station WQGF 318 License off the market and exclusively reserve the License for Metrolink. The Exclusivity Period shall expire upon the earlier of (i) the mutual termination of this Letter of Intent by both parties, (ii) the termination of the Asset Purchase Agreement; and (iii) the ninety-first day after execution of this Letter of Intent, if the Asset Purchase Agreement has not been executed by that date, and the Parties have not extended this Letter of Intent. MCLM agrees that, from the date of mutual execution of this Letter of Intent and for ninety (90) days thereafter, MCLM will not, nor will it permit any affiliate, employee, attorney, accountant, financial adviser, broker or other representative of MCLM to negotiate with, or solicit or encourage submission of any proposal or offer from, any third party other than Metrolink with respect to the sale or lease of WQGF 318, or any of the frequencies authorized in WQGF 318.
- d) Initial Deposit upon Termination for Metrolink's Convenience. In the event that the parties fail to enter into an Asset Purchase Agreement after ninety (90) days,

or in the event that Metrolink determines not to move forward with this transaction for any reason, other than MCLM's failure to negotiate in good faith or otherwise comply with the terms of this Letter of Intent, then Metrolink shall forfeit to MCLM the Initial Deposit. In that event, Metrolink shall instruct the escrow agent to release the Initial Deposit to MCLM. MCLM shall be free to market the spectrum to third parties, and shall retain the Initial Deposit as its sole remedy for damages. Otherwise, the Initial Deposit shall be returned to Metrolink.

- e) Expenses. Each Party shall separately bear its own expenses incurred in connection with this Letter of Intent, regardless of whether or not the Asset Purchase Agreement is executed.
- f) Entire Agreement. This Letter of Intent is intended to be a binding commitment between the Parties, and it constitutes the entire understanding between the Parties and supersedes all prior discussions between the Parties on the subject matter hereof. Except as otherwise provided herein, this Letter of Intent may be amended or modified only by a writing executed by each of the Parties.
- g) Counterparts; Facsimile. This Letter of Intent may be executed in one or more counterparts, all of which when fully executed and delivered by both Parties and taken together shall constitute a single agreement, binding against each of the Parties. To the maximum extent permitted by law or by any applicable governmental authority, any document may be signed and transmitted by facsimile or other electronic means with the same validity as if it were an in signed document.

[Remainder of page intentionally left blank]

We look forward to working with you toward the successful conclusion of the Asset Purchase Agreement within the next ninety days. Please evidence your agreement to this Letter of Intent by signing below, and sending me an original copy of this Agreement by overnight mail or via email in PDF format.

Sincerely,

Darrell J. Maxey 11/13/09

Darrell Maxey  
Director Engineering and Construction  
SCRRA/Metrolink

David Solow

David Solow  
CEO  
SCRRA/Metrolink

Agreed to by:

John Reardon

John Reardon  
CEO

Date: 11/10/09

## Exhibit A

The A Block Frequencies are to be assigned to Metrolink in the area designated below:

### **Pricing of Proposed Spectrum**

#	County	State	Bandwidth	2000 Pops	2009 Estimated Pops	2009 MHz Pops
1	Ventura County	CA	1 MHz	753,197	791,247	791,247
2	Los Angeles County	CA	1 MHz	9,519,338	9,826,493	9,826,493
3	San Bernadino, County	CA	1 MHz	1,709,434	1,981,696	1,981,696
4	Orange County	CA	1 MHz	2,846,289	2,970,485	2,970,485
5	San Diego County	CA	1 MHz	2,813,833	2,937,023	2,937,023
6	Riverside County	CA	1 MHz	1,545,387	2,000,816	2,000,816

Total MHz Pops: 20,507,760

## **Exhibit B**

### **Incumbent MCLM AMTS Licenses to Be Cancelled**

KAE889: Sites 14 (Orange County), 40 (San Diego County), and 44 (Los Angeles, County)



## **ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (this “Escrow Agreement”) is made and entered into as of this 20<sup>th</sup> day of November, 2009, by and among Southern California Regional Rail Authority/Metrolink (“Buyer”), Maritime Communications/Land Mobile, LLC (“Seller”) and Fletcher, Heald & Hildreth, P.L.C., a Virginia professional company, as escrow agent (“Agent”).

### **RECITALS**

A. The Parties have signed a Letter of Intent (the “LOI”) effective as of November 13, 2009, pursuant to which they anticipate execution of an Asset Purchase Agreement (the “Purchase Agreement”) (the LOI and Purchase Agreement are referenced collectively hereinafter as the “Agreements”). Pursuant to the Agreements, and subject to the prior consent of the Federal Communications Commission (“FCC”), Seller desires to assign, and Buyer desires to purchase, all or a portion of the spectrum of the FCC license for Station WQGF 318 in the Metrolink service area designated in the LOI.

B. The Parties desire the Agent to hold and disburse, and Agent is willing to hold and disburse, an Initial Deposit as set forth in the LOI, and in accordance with the terms of this Escrow Agreement.

C. Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to them in the LOI.

### **AGREEMENTS**

In consideration of the recitals and of the respective agreements and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

#### **ARTICLE I** **DEPOSIT**

##### **Section 1.1    Escrow Deposit**

(a) Concurrently with the execution of this Escrow Agreement, Buyer shall deliver to Agent, pursuant to the provisions of the LOI, the sum of SIXTY THOUSAND DOLLARS (\$60,000.00) (the “Escrow Deposit”) in the form of immediately available funds.

(b) The Escrow Deposit shall be held by Agent for the benefit of Buyer and Seller as provided in this Escrow Agreement.

**Section 1.2    Acceptance of Appointment as Agent.** Seller and Buyer, by executing this Escrow Agreement, appoint Agent as escrow agent, and Agent, by

executing this Escrow Agreement, accepts its appointment as escrow agent with respect to the Escrow Deposit and agrees to hold and deliver the Escrow Deposit in accordance with the terms of this Escrow Agreement.

Section 1.3     Disbursement of the Escrow Deposit. Agent shall discharge its duties of distribution and disposal pursuant to this Escrow Agreement, upon compliance with joint written instructions of Seller and Buyer or their duly designated representatives delivered to Agent. If Agent shall not have received such joint written instructions and a controversy shall exist between Buyer and Seller as to the correct disposition of the Escrow Deposit, Agent may, at its election, (a) continue to hold the Escrow Deposit until it receives such joint written instructions or a final order by a court of competent jurisdiction directing the disposition of the Escrow Deposit, (b) resign as provided under Section 2.1(d) below, or (c) commence an interpleader action in a court of competent jurisdiction and pay the Escrow Deposit to such court. Upon Agent doing the actions permitted under either subsection (b) or (c) above, its duties, responsibilities, and liabilities with respect to the Escrow Deposit shall terminate.

Section 1.4     Escrow Deposit Held in IOLTA Account. Agent shall hold the Escrow Deposit in escrow in Agent's law firm IOLTA trust account. Pursuant to the laws of Virginia, any interest that accrues with respect to Escrow Deposit shall inure to the benefit of the Virginia Law Foundation for use in making charitable grants and shall not inure to the benefit of Seller, Buyer or Agent.

## **ARTICLE II** **AGENT**

### Section 2.1     Rights and Responsibilities of Agent.

(a) The duties and responsibilities of Agent shall be limited to those expressly set forth in this Escrow Agreement and Agent shall not be subject to, nor obligated to recognize, any other agreement between, or direction or instruction of, the parties to this Escrow Agreement, unless such agreement, direction or instruction is in writing and signed by both Buyer and Seller, and provided to Agent.

(b) If any controversy arises between the parties to this Escrow Agreement or with any other party concerning the subject matter of this Escrow Agreement, its terms or conditions, Agent will not be required to determine the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent's discretion, Agent may require, notwithstanding what may be set forth elsewhere in this Escrow Agreement. In such event, Agent will not be liable for interest or damage. Furthermore, Agent, at its option, may file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. Agent is authorized to deposit with the clerk of the court all documents and funds held in escrow. All costs, expenses, charges and reasonable attorney fees incurred by Agent due to the interpleader action shall be paid one-half by Buyer and one-half by Seller. Upon initiating such

action, Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Escrow Agreement.

(c) In performing any duties under this Escrow Agreement, Agent shall not be liable to any party for damages, losses, or expenses, except as a result of negligence or willful misconduct on the part of Agent. Agent shall not incur any such liability for any action taken or omitted in reliance upon any instrument, including any written statement or affidavit provided for in this Escrow Agreement, that Agent shall in good faith believe to be genuine, nor will Agent be liable or responsible for forgeries, fraud, impersonations, or determining the scope of any representative authority. In the absence of knowledge that any action taken or purported to be taken hereunder is wrongful, Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Escrow Agreement.

(d) Agent, and any successor Agent, may resign at any time as escrow agent hereunder by giving at least thirty (30) days' prior written notice to Seller and Buyer. Upon such resignation and the appointment of a successor escrow agent, the resigning Agent shall be absolved from any and all further liability in connection with the exercise of its powers and duties as escrow agent hereunder, except for liability arising in connection with its own negligence or willful misconduct. Upon their receipt of notice of resignation from Agent, Buyer and Seller shall use reasonable efforts jointly to designate a successor Agent. In the event Buyer and Seller do not agree upon a successor escrow agent within thirty (30) days after the receipt of such notice, Agent so resigning may petition any court of competent jurisdiction for the appointment of a successor agent or other appropriate relief and any such resulting appointment shall be binding upon all parties hereto. By mutual agreement, Buyer and Seller shall have the right at any time upon not less than ten (10) days' prior joint written notice to Agent to terminate the appointment of Agent, or successor Agent, as escrow agent hereunder. Agent or successor Agent shall continue to act as escrow agent until a successor is appointed and qualified to act as Agent.

(e) The Agent shall have no duties other than those expressly imposed upon it herein.

(f) No provisions of this Escrow Agreement shall require the Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(g) All of the Agent's rights hereunder are cumulative of any other rights it may have by law or otherwise.

Section 2.2 Expenses of Agent. Agent shall be entitled to reimbursement for its reasonable out-of-pocket expenses actually incurred by it in connection with its duties under this Escrow Agreement (the "Agent Expenses"). Except as otherwise provided

herein, all Agent Expenses shall be invoiced periodically by Agent and shall be an obligation of Buyer.

Section 2.3 Indemnification of Agent. The parties and their respective successors and assigns agree, jointly and severally, to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, reasonable legal counsel fees and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Escrow Agreement, including, but not limited to, any litigation arising from this Escrow Agreement or involving its subject matter; *provided, however*, neither Buyer nor Seller nor their successors and assigns need indemnify Agent for any loss, claim, damage, liability or expense caused by Agent's negligence or willful misconduct.

Section 2.4 Agent's Representation of Buyer. Seller acknowledges that Agent has represented Buyer in connection with the LOI, and is providing its services under this Escrow Agreement at the request of, and as an accommodation to, the parties. Seller agrees that the provision of services by Agent under this Escrow Agreement does not create any attorney-client relationship or otherwise bar or limit the ability of Agent to represent Buyer in connection with the transactions contemplated under the Agreement and its consummation, or in any litigation or other proceedings that might arise, provided, however, that in the event of such litigation or proceedings, Agent shall proceed in accordance with Sections 1.3(b) or (d) above.

### **ARTICLE III** **MISCELLANEOUS**

Section 3.1 Notices. All notices, requests, consents or other communications required or permitted under this Escrow Agreement shall be in writing and shall be deemed to have been duly given or delivered by any party (a) when received by such party if delivered by hand, (b) upon confirmation of delivery after being sent by recognized overnight delivery service or (c) within five (5) business days after being mailed by first-class mail, postage prepaid, and in each case addressed as follows:

If to Seller:

Mr. John Reardon  
CEO  
Maritime Communications/Land Mobile, LLC  
218 N. Lee Street, Suite 318  
Alexandria, Virginia 22314

If to Buyer:

David Solow  
CEO  
SCRRA/Metrolink  
700 South Flower St. Suite 2600  
Los Angeles, CA 90017

With a copy to

(which shall not constitute notice):

Helen Parker, Esq.  
General Counsel  
c/o Olga Yero, Board Secretary  
SCRRA/Metrolink  
700 S. Flower St. Suite 2600  
Los Angeles, CA 90017

If to Agent:

Paul J. Feldman, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

Any party, by written notice to the other parties pursuant to this Section 3.1, may change the address or the persons to whom notices or copies thereof shall be directed.

Section 3.2 Assignment. This Escrow Agreement and the rights and duties hereunder shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of each of the parties to this Escrow Agreement. No rights, obligations or liabilities hereunder shall be assignable by any party without the prior written consent of the other parties, except that Buyer may assign its rights under this Escrow Agreement without obtaining the prior written consent of the other parties hereto, to any person or entity to whom, pursuant to the Agreement, Buyer is permitted to assign all or any portion of its rights under the Agreement; *provided, however*, that any such assignee duly executes and delivers an agreement to assume Buyer's obligations under this Escrow Agreement.

Section 3.3 Amendment. This Escrow Agreement may be amended or modified only by an instrument in writing duly executed by Agent, Buyer and Seller.

Section 3.4 Waivers. Any waiver by any party hereto of any breach of or failure to comply with any provision of this Escrow Agreement by any other party hereto shall be in writing and shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Escrow Agreement.

Section 3.5 Construction. This Escrow Agreement shall be construed and enforced in accordance with and governed by the laws of the Commonwealth of Virginia, without giving effect to the choice of law provisions thereof that may direct the

application of the laws of another jurisdiction. Any proceedings to enforce this Escrow Agreement shall be commenced in a court of competent jurisdiction in the Commonwealth of Virginia. The parties agree not to assert or interpose any defenses, and do hereby waive the same, to the conferral of personal jurisdiction and venue by such court in any suit, action or proceeding. The headings in this Escrow Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Escrow Agreement. Unless otherwise stated, references to Sections and Exhibits are references to Sections and Exhibits of this Escrow Agreement.

Section 3.6 Third Parties. Nothing expressed or implied in this Escrow Agreement is intended, or shall be construed, to confer upon or give any person or entity other than Buyer, Seller and Agent, and their respective permitted successors and assigns, any rights or remedies under, or by reason of, this Escrow Agreement.

Section 3.7 Waiver of Offset Rights. Agent hereby waives any and all rights to offset that it may have against the Escrow Deposit including, without limitation, claims arising as a result of any claims, amounts, liabilities, costs, expenses, damages, or other losses that Agent may be otherwise entitled to collect from any party to this Escrow Agreement.

Section 3.8 Attorneys Fees/Costs of Suit. If either Buyer or Seller institutes a legal action against the other with respect to the Escrow Deposit, the prevailing party shall be entitled to its attorneys fees and costs of suit, including the cost of any appeals.

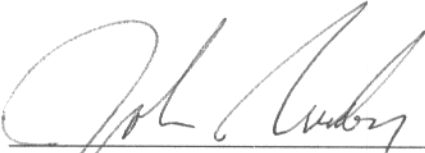
Section 3.9 Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which shall be deemed any original and all of which together shall constitute a single instrument.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO ESCROW AGREEMENT]

**IN WITNESS WHEREOF**, Seller, Buyer and Agent have caused this Escrow Agreement to be executed by their duly authorized representatives, as of the day and year first written above.

**SELLER: MARITIME COMMUNICATIONS/LAND MOBILE, LLC**

By:   
John Reardon  
CEO

**BUYER: SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**

By: \_\_\_\_\_  
David Solow  
CEO

**AGENT: FLETCHER, HEALD & HILDRETH, P.L.C.**

By: \_\_\_\_\_  
Paul J. Feldman  
Member

[SIGNATURE PAGE TO ESCROW AGREEMENT]

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By: \_\_\_\_\_  
John Reardon  
CEO

**BUYER: SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**

By: \_\_\_\_\_  
David Solow  
CEO

**AGENT: FLETCHER, HEALD & HILDRETH, P.L.C.**

By: \_\_\_\_\_  
Paul J. Feldman  
Member



[SIGNATURE PAGE TO ESCROW AGREEMENT]

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John Reardon  
CEO

**BUYER: SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**

By: \_\_\_\_\_  
David Solow  
CEO

**AGENT: FLETCHER, HEALD & HILDRETH, P.L.C.**

By:  \_\_\_\_\_  
Paul J. Feldman  
Member



# BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

822 KENNETH HAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012  
Telephone (213) 974-4444 / FAX (213) 626-6941

**DON KNABE**  
SUPERVISOR, FOURTH DISTRICT

April 19, 2010

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Secretary Dortch:

I would like to offer my strong support of the Southern California Regional Rail Authority (SCRRA) and Maritime Communications/Land Mobile LLC's application for the assignment of critically needed radio spectrum and license modification to station WQGF318 for the development and implementation of Positive Train Control throughout the six counties of Southern California.

As a member of the Los Angeles County Board of Supervisors, the Los Angeles County Metropolitan Transportation Authority (LACMTA) Board of Directors, the Boards of the Southern California Regional Rail Authority (SCRRA), and the Alameda Corridor Transportation Authority (ACTA), I am unequivocally committed to safety and the safe operation of passenger and freight rail services through the implementation of Positive Train Control in our region by 2012. The Federal Communications Commission's approval of the SCRRA filings is a critical step in the advancement of public safety by enabling a robust and interoperable train control system as mandated by the Rail Safety Act of 2008 (PL 110-432).

Thank you for your timely consideration and approval of this application.

Sincerely,

A handwritten signature in black ink, appearing to be "Don Knabe", is written over the word "Sincerely," and extends down into the printed name.

DON KNABE  
Supervisor, Fourth District  
County of Los Angeles

DK:nh

scraadortchltr41910

c: Mr. John Fenton  
Chief Executive Officer, SCRRA  
✓ Ms. Elizabeth Mahoney  
Manager, Government and Regulatory Affairs, SCRRA-Metrolink

June 11, 2010

**VIA E-MAIL ONLY**

Warren Havens

warren.havens@sbcglobal.net

Dear Mr. Havens,

On April 23, 2010, you submitted a request for four categories of public records relative to the "SCRRA-MCLM contract for 217-222MHz FCC radio frequency licenses." On May 3, we responded to your request, providing records responsive to the first and fourth of your requests, and notifying you that we would contact you on May 17, 2010 with a determination as to whether your second and third requests sought copies of disclosable public records in SCRRA's possession. On May 17, we indicated that we had located disclosable public records that were responsive to your second and third requests and that we would transmit them electronically to you by June 10. This letter contains those records.

**Request No. 2**

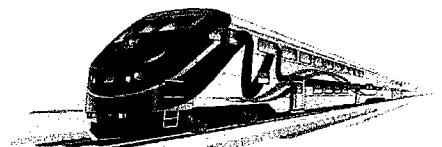
"All correspondence and communications of any kind that relate to item '1' above between SCRRA and MCLM."

**Response to Request No. 2**

SCRRA has located responsive records and provides them electronically with this letter as requested. Please note that personal cell phone numbers have been redacted in accordance with Government Code section 6255.

**Request No. 3**

"All correspondence and communications of any kind that relate to item '1' and '2' above between SCRRA and: (i) the Federal Communications Commission (the "FCC"), (ii) any other federal agency including the Federal Railroad Administration, or (iii) any State of California agency, employee of any State of California agency, or member of the State of California legislature."



Response to Request No. 3

SCRRA has already provided records responsive to request 3(i). SCRRA has located records responsive to request 3(ii) and provides them electronically with this letter as requested. SCRRA has no records responsive to request 3(iii).

Please see our May 2 letter regarding your Request No. 4. Please let me know if you have any additional questions.

Sincerely,



Robert L. Sanders  
Administrative Services Supervisor  
sandersr@scrra.net  
(213) 452-0289

